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Inalienable Rights of Property: A Study of Contract Obligations and Other Vested Rights

I. GENERAL CONSIDERATIONS.

1. THE SOURCE OF VESTED RIGHTS.

THE doctrine that contract obligations and other vested rights are indefeasible except in the due exercise of the police power, of the right of eminent domain, or of the power of taxation or local assessment, is the necessary result of familiar constitutional provisions.

In the state constitutions of 1849 and 1879 it is declared:¹ "All men . . . have certain inalienable rights, among which are those of . . . acquiring, possessing, and protecting property."

Again, the United States Constitution declares that:² "No state shall . . . pass any . . . law impairing the obligation of contracts;" and the state constitutions of 1849 and 1879 declare:³ "No . . . law impairing the obligation of contracts, shall ever be passed."

2. THE PHRASE "VESTED RIGHTS."

Of the phrase "vested rights" it is said by the Supreme Court:⁴

"The term 'vested right' is often loosely used. In one sense every right is vested. If a man has a right at all, it must be vested in him; otherwise, how could it be a right? The moment a contract is made, a right is vested in each party to have it remain unaltered, and to have it performed. The term, however, is frequently used to designate a right which has become so fixed that it is not subject to be divested without the consent of the owner, as contradistinguished from rights which are subject to be divested without his consent."

It is in the sense last mentioned, and as indicating those rights

¹ Cal. Const. Art. I, § 1.

² U. S. Const. Art. I, § 10, subd. 1.

³ Cal. Const. Art. I, § 16.

⁴ *Stohr v. S. F. Musical Fund Soc.* (1890), 82 Cal. 557, 560, 22 Pac. 1125.

which are protected and made indefeasible by the foregoing constitutional provisions, that the term "vested rights" is used in what follows.

3. THE GUARANTY OF PROPERTY.

The right given of protecting property is not the simple right of protection by individual force, but the right to protect it by the law of the land and the force of the body politic.⁵

4. THE GUARANTY OF CONTRACT OBLIGATIONS.

The right secured by the guaranty of contract obligations, like that secured by the guaranty of property, is a right of property.⁶ Of this guaranty it was said in 1858:⁷

"Whatever provision of a statute substantially defeats the end contemplated by the parties in making the contract must impair its obligation. . . . The power to impose conditions, after the contract is once completed and perfect, is nothing but the power to impair its obligation, and this the Constitution has prohibited."

The same year, the court said:⁸

"The question is not whether by legislative alteration of a contract a party is to be injured seriously or only slightly. He has a right to the substance of the contract as he has made it. It is his privilege to judge for himself whether it is for his interest for the agreement to be discharged in a particular way stipulated or in a different mode; and neither the courts nor the legislature can change it in any substantial particular."

Almost fifty years later, two Commissioners of the Supreme Court said, in similar vein:⁹

"The language of the two constitutions (federal and state) is not ambiguous nor doubtful. Any law which impairs the obligation of a contract is prohibited. The restriction is not aimed solely at laws which expressly destroy or annul contracts, or in a certain degree impair their obligation, but it applies to all laws which in any substantial degree impair the obligation of contracts."

A mortgage and a judgment are, both alike, contracts within the meaning of this guaranty.¹⁰

⁵ *Billings v. Hall* (1857), 7 Cal. 1, 16.

⁶ *Ex parte Newman* (1858), 9 Cal. 502, 516.

⁷ *Robinson v. Magee* (1858), 9 Cal. 81, 84, 70 Am. Dec. 638.

⁸ *People v. Bond* (1858), 10 Cal. 563, 571.

⁹ *Welsh v. Cross* (1905), 146 Cal. 621, 624, 81 Pac. 229, 106 Am. St. Rep. 63.

¹⁰ *Scarborough v. Dugan* (1858), 10 Cal. 305, 308, (judgment); *Tuol-*

In an early case it was said that a grant is an executed contract, but, its purpose being accomplished, has no existing obligation to be impaired.¹¹ Shortly afterwards, however, the court held that a legislative grant is an executed contract within the constitutional protection.¹² This has never since been questioned.

In forming a government the people do not, however, make a contract with the government thereby ordained, in the sense of the Constitution.¹³

The guaranty of the United States Constitution is self-executing.¹⁴ It is to be noted, however, that this guaranty, at least in terms, is limited to such rights as arise from contract,¹⁵ that it is directed solely at state action and not at federal action, and thus that within the sphere of federal action there are, at least so far as express statement goes, no guaranties.

5. OPERATION OF GUARANTIES IN GENERAL.

It is not competent, by act of the legislature, freeholders' charter, or other enactment, to deprive one of a vested right.¹⁶ "The power of the legislature to affect past contracts, and alter the nature or tenure of estates, could not be maintained."¹⁷

Nor can the legislature authorize any person, natural or artificial, to violate a contract.¹⁸ The guaranty of contract obligations is directed as much against the impairment of a contract obligation by proceedings, as, for example, the incorporation of a city, taken under a general law authorizing the same, as against the direct impairment thereof by law.¹⁹

umne Redemption Co. v. Sedgwick (1860), 15 Cal. 515, 528 (mortgage and judgment).

¹¹ *Myers v. English* (1858), 9 Cal. 342, 350.

¹² *Grogan v. San Francisco* (1861), 18 Cal. 590, 613.

¹³ *Billings v. Hall* (1857), 7 Cal. 1, 5.

¹⁴ *Oakland Paving Co. v. Hilton* (1886), 69 Cal. 479, 484, 11 Pac. 3.

¹⁵ In *Robinson v. Magee* (1858), 9 Cal. 81, 83, 70 Am. Dec. 638, Burnett, J., said in the leading opinion: "It is the 'obligation of contracts' that cannot be impaired. The obligation of other things than contracts is not protected. A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing."

¹⁶ *Kavanagh v. Board of Police Pension Fund Commissioners* (1901), 134 Cal. 50, 52, 66 Pac. 36.

¹⁷ *Dewey v. Lambier* (1857), 7 Cal. 347, 348. "The rights and duties of parties to a contract are, of course, fixed by the terms of the contract itself; these cannot be changed by any legislation." *Hibernia Savings & Loan Soc. v. Jordan* (1880), 2 Cal. Unrep. Cas. 79, 83, 5 Pac. Coast L. J. 381, 7 Cal. Unrep. Cas. 398, 6 Pac. Coast L. J. 686, judgment reversed on rehearing, *Hibernia Savings & Loan Soc. v. Hayes* (1880), 56 Cal. 297.

¹⁸ *English v. Board of Supervisors* (1861), 19 Cal. 172, 185.

¹⁹ *People v. Banning Company* (1913), 166 Cal. 635, 638, 138 Pac. 101.

Moreover, by reason of the guaranty of the Federal Constitution, a state cannot release itself from the obligation of a valid contract any more by adopting a constitutional amendment or new Constitution than by legislative action.²⁰

6. WHETHER VESTED RIGHTS ARE PROTECTED FROM JUDICIAL DECISIONS DIFFERENTLY CONSTRUING THE LAW.

In a decision in 1892, the Supreme Court held that where the owner of California land caused the same to be conveyed by deed absolute, June 12, 1869, to secure certain advances then made him by the grantees, and at the time of said conveyance there had been decisions in this state to the effect that a conveyance absolute in form, but intended merely as security, did not pass legal title to the grantee, but in 1870 it was held that a deed absolute in form, intended as a mortgage, did convey the legal title, the latter decisions, not the former, declared the law applicable to the conveyance in question.²¹ Five justices, in the leading opinion, declared:

"These decisions (of 1870) did not change the law: they simply declared what was the law The courts cannot make or repeal a law. 'They can say what a law means; and if afterwards they see that they have made a mistake, they can correct their error by an overruling of a former decision, the consequence of which overruling is that the blunder is thenceforward deemed never to have been law.'"

Chief Justice Beatty, however, dissented, and among other things, said:

"The construction given to our laws by these decisions (which had been rendered when the conveyance was made in 1869) was the law itself at the date of that deed, and fixed the rights of the parties so that they could not be changed by a subsequent construction any more than by subsequent legislation."

In 1899, in a case in Department Two of the Supreme Court, a like conclusion was reached. It appeared therein that in 1883

²⁰ *Ede v. Knight* (1892), 93 Cal. 159, 161, 28 Pac. 860; *McCabe v. Goodwin* (1895), 106 Cal. 486, 491, 39 Pac. 941; *Los Angeles v. Teed* (1896), 112 Cal. 319, 327, 44 Pac. 580. Thus the provision of Art. XVII, § 3, of the Constitution of 1879, forbidding the state from granting certain lands except to actual settlers, is inapplicable to a sale of such class of lands, fully consummated before the Constitution took effect. *McCabe v. Goodwin* (1895), 106 Cal. 486, 490, 39 Pac. 941.

The franchise granted by Art. XI, § 19, of the Constitution of 1879, before the amendment of 1911, to certain purveyors of light and water in cities, cannot be impaired by amendment of that section. *Ex parte Keppelmann* (1914), 166 Cal. 770, 773, 138 Pac. 346.

²¹ *Allen v. Allen* (1892), 95 Cal. 184, 199, 30 Pac. 213.

the Supreme Court, contrary to and without allusion to section 2888 of the Civil Code, had declared that the title to the mortgaged personalty there involved passed to the mortgagees and remained in them until performance of the mortgage conditions, and that this statement of the court was not corrected by it until 1896; nevertheless Department Two held that although certain sheep had been mortgaged in the interim between 1883 and 1896, the claim of the mortgagee, based upon the decision of 1883, that he had title to the sheep and hence to the wool from the sheep, and that to adjudge otherwise would impair the obligation of his contract of mortgage, could not be sustained.²² In reaching this result the court said:

"Laws are not made by judicial decisions. The court simply determines the rights of the parties to the action in that particular controversy. It is no part of its purpose even to declare the law. The decision has never been thought to have the force and effect of law except in that special controversy. In other suits it is an authority more or less persuasive according to the reasonableness of the rule. Courts have never thought themselves bound by it as they are by a valid statute. And if it is manifestly wrong the community does not act upon it."

Finally in 1914, in a case where, however, the contract in question was made before the decisions afterwards held to be erroneous were rendered, the Supreme Court in bank referred with apparent approval to the decision in the two cases last above cited.²³

7. WAIVER OF VESTED RIGHTS.

Where judgment was rendered in favor of the state on an undertaking for the appearance of one accused of crime, who had failed to appear, the legislature, under the Constitution of 1849, had the power to release the judgment in such form and on such conditions as it chose.²⁴ Thus where the accused afterwards appeared and was tried and acquitted, there was no constitutional objection to a statute²⁵ authorizing the Court of Sessions of Eldorado County to release the accused and his sureties from liability on such judgment and undertaking.²⁶

²² *Alferitz v. Borgwardt* (1899), 126 Cal. 201, 207, 58 Pac. 460.

²³ *Bridge v. Connecticut Mut. Life Ins. Co.* (1914), 167 Cal. 774, 785, 141 Pac. 375.

²⁴ *People v. Bircham* (1859), 12 Cal. 50, 54.

²⁵ Cal. Stats. 1853, p. 178.

²⁶ *People v. Bircham* (1859), 12 Cal. 50.

Again, "a plaintiff may consent that the judgment in his favor be reopened in order that the defendant may present a new issue for trial, without regard to the question whether the defendant had the opportunity to have presented that issue in the former trial; and if he does so consent, no one, and certainly not the plaintiff, can complain of the giving of the consent."²⁷ Thus there is no constitutional objection to a statute of 1863^{27a} amending the Revenue Law of 1861,²⁸ and allowing, in actions for the recovery of delinquent taxes levied pursuant to said act, the new and additional defense "that the land (on which the taxes were levied) is situate in and has been duly assessed in another county, and the taxes thereon paid," and providing that in pending actions such defense may be interposed, and in actions which have proceeded to judgment but in which the judgment remains wholly unsatisfied, on motion of defendant the judgment shall be reopened and defendant permitted to set up such defense.²⁹

8. POINTS FOR FURTHER CONSIDERATION.

The first important question that suggests itself in the further consideration of vested rights is: Are all rights vested, and, if not, what rights are vested and what not,—what within the protection of the constitutional guaranties and what not? Certainly, in view of the broad language of the guaranties, the reasonable position is that all rights are so vested unless some sufficient reason appears for a contrary conclusion. This is practically the standpoint of the decisions to be considered in the further progress of this discussion. As said of contract obligations by the Supreme Court in 1859:³⁰

"The (state) constitution does not inhibit all legislation in respect to contracts; it only forbids the impairing of their obligation."

The answer to the question just stated thus consists mostly in ascertaining what, if any, rights are not included within the constitutional protection, and the line of demarcation between the rights within and those outside the constitutional protection.

The first class of cases with relation to which this question will be considered consists of rights which by the law or contract of

²⁷ *People v. Frisbie* (1864), 26 Cal. 135, 140.

^{27a} Cal. Stats. 1863, p. 712.

²⁸ Cal. Stats. 1861, p. 419.

²⁹ *People v. Frisbie* (1864), 26 Cal. 135, 139.

³⁰ *Thornton v. Hooper* (1859), 14 Cal. 9, 11.

their creation are expressly made revocable.

It may also be asked concerning rights which inhere in the public, or in public authorities, agencies, or officers, as such, and do not inhere in particular individuals as such.

Then, it may be asked of individual rights of specific individuals under transactions with public authorities.

Next, it may be asked of the rights of individuals in particular kinds of property.

Again, it may be asked of the rights of individuals under transactions to which they are parties.

Finally, it may be asked with reference to adjective and remedial rights.

Moreover, in connection with each of these classes of rights, three further questions present themselves for consideration: First, whether or not any particular right or group of rights comes within that class? Second, what may properly be deemed to impair a given right or group of rights? Third, when is such right only in process of becoming, and when may it be deemed to have come fully into being so as to have become vested?

In the further progress of this article, each of the class of rights mentioned will be considered in connection with each of the questions suggested.

II. RIGHTS EXPRESSLY MADE REVOCABLE.

It would appear quite evident that no right which by the law or contract of its creation is expressly made revocable or subject to change, is vested; though it has been said that even in such a case a change cannot be retroactive so as to take away from a party to a contract fruits that have already ripened before the change is made.³¹

Rights under laws concerning corporations.—One of the oldest as well as one of the most familiar instances of revocable rights is found in the constitutional reservation of power to alter or repeal laws concerning corporations. The state constitution of 1849 provided: ³² "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed;" and the state con-

³¹ See *Stohr v. S. F. Musical Fund Soc.* (1890), 82 Cal. 557, 561, 22 Pac. 1125.

³² Art. IV, § 31.

stitution of 1879, provides: ³³ "Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed." ³⁴

By virtue of these provisions, it was said by three justices of the Supreme Court that under the California Statutes of 1858³⁵ relating to the incorporation of companies to supply municipalities with water, giving each such company the right to use the public streets and places for its pipes and to condemn private property, on condition that it furnish pure fresh water to the inhabitants at reasonable rates and without discrimination, and to the municipality free water "in case of fire or other great necessity," and providing that water rates be determined annually by a board of commissioners selected, two by the municipal authorities and two by the water company, and in case the four cannot agree, the four to choose a fifth member of the board, or if the four cannot agree upon the fifth, then the sheriff to appoint the fifth, where the Spring Valley Water Works, incorporated June 19, 1858, pursuant to said act, and supplied water to San Francisco and its inhabitants thereunder, the company held the right of participating in the selection of the rate-fixing tribunal as a mere privilege subject to the retained power of the state, in the exercise of which it was liable at any time to be modified or annulled.³⁶ Again, it was said by three commissioners of the Supreme Court in an opinion adopted by four justices, that by virtue of these constitutional provisions,

³³ Art. XII, §1.

³⁴ In apparent disregard of these constitutional provisions, the court in *Spring Valley Water Works v. Schottler* (1882), 62 Cal. 69, 110, 10 Pac. Coast L. J. 430, declared that the franchise of a corporation to be a corporation is property vested in the corporation and protected by the guaranty which forbids its being taken except for public purposes and on compensation being made.

³⁵ Cal. Stats. 1858, p. 218.

³⁶ *Spring Valley Water Works v. Board of Supervisors* (1881), 61 Cal. 3, 7 Pac. Coast L. J. 614; judgment affirmed, *Spring Valley Water Works v. Schottler* (1884), 110 U. S. 347, 28 L. Ed. 173, 4 Sup. Ct. Rep. 48. McKee & Sharpstein, JJ., in leading opinion added, however (p. 5): "As has been said by the Supreme Court of the United States, 'the power of alteration and amendment (reserved by the constitution) is not without limit; the alterations must be reasonable, they must be made in good faith and be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reserved powers, the vested rights of property of corporations, in such cases are surrounded by the same sanctions and are as inviolable as in other cases.'"

an objection that a proceeding for consolidation of corporations under laws not in existence at the time of the formation of such corporations is violative of the constitutional rights of non-consenting stockholders, cannot be sustained.^{36a} And it has been held that in view of these provisions, to apply the provisions³⁷ of the constitution of 1879, and of section 322 of the Civil Code, establishing the proportional liability of corporate stockholders for corporate debts, to corporations formed or doing business before the code and constitution were adopted, does not impair constitutional rights.³⁸

Rights arising from reliance upon corporate by-laws.—As by the Civil Code³⁹ the by-laws of a corporation are subject to amendment as therein provided, the contract with the corporation of one who, in reliance upon the terms of the by-laws, pays money to the corporation, is subject to alteration or revocation, so far as future benefits thereunder are concerned, by amendment of the by-laws as by law provided.⁴⁰

Rights arising under contract reserving the right to change its terms.—Obviously the rights of a party to a contract which gives the other party thereto the right to change it in a designated way, or by a designated method, are subject to alteration in the manner so designated.⁴¹

Effect of section 327 of the Political Code.—Section 327 of the Political Code provides:

"Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal."

There is not, however, in this section any such reservation of

^{36a} Per Searls, Haynes and Britt, CC., in leading opinion adopted by McFarland, Garoutte, Van Fleet and Henshaw, JJ., in *Market Street Ry. Co. v. Hellman* (1895), 109 Cal. 571, 584, 42 Pac. 225.

³⁷ Art. XII, § 3.

³⁸ *McGowan v. McDonald* (1896), 111 Cal. 57, 66, 43 Pac. 418, 52 Am. St. Rep. 149. Compare, however, contra, the remark in *Harmon v. Page* (1882), 62 Cal. 448, 460, 10 Pac. Coast L. J. 634, that the provisions of the state Constitution of 1879, Art. XII, §§ 2 and 3, relating to the stockholders' proportional liability for corporate debts, "do not apply to this case, as the liability of the stockholder accrued before the new constitution was adopted."

³⁹ Cal. Civ. Code, § 304.

⁴⁰ *Stohr v. S. F. Musical Fund Soc.* (1890), 82 Cal. 557, 560, 22 Pac. 1125.

⁴¹ *Supra*, n. 40.

a right to revoke the franchise along, upon and across public lands, ways and waters, granted by section 536 of the Civil Code to telegraph corporations which construct lines of telegraph along, upon or across the same, as warrants the state or a local authority in taking such franchise away without compensation.⁴² But, in view of this section, there can be no question of the power of the legislature to destroy such an inchoate and unvested and purely statutory right as the right of action created against the directors of corporations by section 309 of the Civil Code, providing in part: ⁴³

"The directors of corporations must not . . . create any debts beyond their subscribed capital stock . . . For any violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the . . . debt contracted."

Where, during the pendency of an action under said provision, against the directors of a railroad corporation, and before judgment therein, such provision of the Civil Code was expressly superseded as to railroad corporations by The Public Utilities Act,⁴⁴ the action could not be longer maintained.⁴⁵

III. RIGHTS OF THE PUBLIC, OR ARISING FROM PUBLIC ACTS OR TRANSACTIONS IN WHICH PARTICULAR INDIVIDUALS ARE NOT SPECIALLY INTERESTED, OR IN PUBLIC OFFICE.

Public rights in public property.—In case of property belonging to the state and not subject to vested interests of private individuals, the legislature has full control over the sale, and may regulate or change at any time the method of disposition thereof, even while the sale is pending; there is no vested nor fixed right in the state or its officers to sell in any particular way.⁴⁶

⁴² *Western Union Telegraph Co. v. Hopkins* (1911), 160 Cal. 106, 119, 116 Pac. 557.

⁴³ As amended by Cal. Stats. 1905, p. 556.

⁴⁴ Cal. Stats. Ex. Sess. 1911, p. 18, pp. 45-46.

⁴⁵ *Moss v. Smith* (1916), 51 Cal. Dec. 125, 132, 155 Pac. 90.

⁴⁶ *Buck v. Canty* (1912), 162 Cal. 226, 233, 121 Pac. 924, where at the time the State Controller, pursuant to authority given him by section 3897 of the Political Code, as amended by Stats. 1897, p. 436, authorized the tax collector to sell certain land which theretofore had been sold to the state for delinquent taxes, said section provided that the tax collector so authorized must give notice of the sale by publication, but before the time

Rights arising from public transactions in which particular individuals are not specially interested.—In 1861 the Supreme Court declared that “so far as municipal corporations are invested with subordinate legislative powers for local purposes, they are mere instrumentalities of the state for the convenient administration of the government, and their powers are under the entire control of the legislature; they may be qualified, enlarged, restricted or withdrawn at its discretion,” but that a grant by the legislature of property to a municipal corporation is as inviolable as a like grant to an individual.⁴⁷ The court therefore held void a provision of a statute⁴⁸ attempting to validate certain void sales, which San Francisco had attempted to make in 1853, of the ninety-nine-year estate, granted to the city by the state March 26, 1851, in certain lots within the city.⁴⁹

In 1895 the Supreme Court declared that while it is not to be denied that the state may make a contract with a municipal corporation which it cannot impair, or permit such contracts between municipal corporations, it still is true that such a contract, to be unimpairable, must be in its nature private, although the public derive a common benefit therefrom, and can never relate to a matter of municipal polity or of civil or political power; an act of the legislature respecting these things is not in the nature of a contract.⁵⁰ Hence it was held that where a statute of 1889,⁵¹ supplying a method for excluding from a city territory previously included therein, provided that the territory excluded should not thereby be released from liability for its proportion of any then outstanding indebtedness of the city, and a statute of 1893⁵² provided for the ascertainment on a prescribed basis of the proportion of such indebtedness properly chargeable to territory that had theretofore been or should thereafter be excluded from a city, there was no constitutional objection to the application of the rule laid down by the latter statute to the determination of the propor-

set for the sale the amendment to said section by Stats. 1905, p. 31, took effect, whereby the tax collector, in addition to publication, was required also to mail a copy of said notice, with postage prepaid, to the last person to whom the land had been assessed, if his address was known, and it was held that the sale having been made without the notice by mail, was void.

⁴⁷ *Grogan v. San Francisco* (1861), 18 Cal. 590, 613.

⁴⁸ Cal. Stats. 1858, p. 322, § 3.

⁴⁹ *Supra*, n. 47.

⁵⁰ *Johnson v. San Diego* (1895), 109 Cal. 468, 477, 42 Pac. 249, 38 L. R. A. 178.

⁵¹ Cal. Stats. 1889, p. 356.

⁵² Cal. Stats. 1893, p. 536.

tion of indebtedness properly chargeable against territory excluded from San Diego city in 1890 while the former statute was in force.⁵³

In line with the latter case, it had been held in 1891 that where an irrigation district was organized under the Wright Act⁵⁴ with one hundred and eight thousand acres within its boundaries, and such district at an election granted authority to the directors thereof to issue and sell bonds of such district to the amount of eight hundred thousand dollars, but before any of the bonds were issued or sold certain lands were excluded from the district by virtue of proceedings under the statutes of 1889,⁵⁵ and the area of the district thereby reduced to eighty thousand acres, and thereafter the directors voted to issue four hundred thousand dollars worth of such bonds, and took proper steps for their issuance that there is no basis for any claim of violation of constitutional rights in such action.⁵⁶ Yet, in another case, in 1904, without apparent support in reason, it was held,—the Wright Act at the time of the organization of an irrigation district thereunder providing (section 13) that the legal title to its property “shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act,” and (section 17) that the bonded indebtedness of the district and interest thereon “shall be paid by revenue derived from an annual assessment upon the real property of the district,”—that the application to said district of statutes of 1893, page 175, amending section 17 of the act by adding a clause authorizing the board of directors of a district, as additional security for the payment of its bonded indebtedness, to hypothecate all the property of the district, violates contract rights protected by the constitutional guaranties, in that the organization of a district by vote of its electors cannot be regarded otherwise than as a contract between the state and the individuals whose property was thereby affected, although lacking one of the ordinary elements of contracts, the actual consent of all parties to it.⁵⁷

⁵³ *Supra*, n. 50.

⁵⁴ Cal. Stats. 1887, p. 29.

⁵⁵ Cal. Stats. 1889, p. 21.

⁵⁶ *Board of Directors v. Tregoe* (1891), 88 Cal. 334, 359, 26 Pac. 237.

⁵⁷ *Merchants National Bank v. Escondido Irrigation District* (1904), 144 Cal. 329, 334, 77 Pac. 937. Of this decision, the court said, in *Nevada National Bank v. Board of Supervisors* (1907), 5 Cal. App. 638, 651, 91 Pac. 122: “No fault can be found with that decision as applied to the facts of the case.”

But the acceptance by the state of the grant to it by the Arkansas Swamp Land Act,⁵⁸ the Act of Congress of September 28, 1850, among other things, granting to the state of California all swamp and overflowed land within its limits, on condition that the proceeds of the land, "whether from sale or by direct appropriation in kind," be applied, as far as necessary, in reclaiming the lands by levees and drains, did not create a contract nor a trust following the lands.⁵⁹

Rights in public office.—In 1863 Justice Crocker of the Supreme Court declared:⁶⁰

"The legislature may increase or diminish the salary or fees of any officer, unless prohibited by the constitution, without impairing any vested right Public officers have no proprietary interest in their offices, and their rights and duties may be changed by the legislature during their terms in office. . . . A law creating an office may be repealed before its term has expired, and the office and compensation ended thereby. . . . The legislature can limit the tenure and provide for the removal of an officer even when the office is created by the constitution."

In 1885, it was said by two justices of the Supreme Court:⁶¹

"It is well settled that salaried public offices, created by the legislature, are not held by contract or grant. The legislature has full control over them, unless restricted by the constitution, and may abolish them altogether, or impose upon them new duties or reduce their salaries."

In 1903, Department One of the Supreme Court, viewing the question for the first time, not only from the standpoint of the government which created the office, but from that of the relation of the officeholder to other individuals and public authorities, said in substance:⁶²

⁵⁸ 9 Stats. at L. p. 519.

⁵⁹ Reclamation District No. 108 v. Hagar (1884), 66 Cal. 54, 55, 4 Pac. 945, on authority of Hagar v. Reclamation District No. 108 (1884), 111 U. S. 701, 712, 28 L. Ed. 569, 4 Sup. Ct. Rep. 663.

⁶⁰ Cohen v. Wright (1863), 22 Cal. 293, 319.

⁶¹ Miller v. Kister (1885), 68 Cal. 142, 144, 8 Pac. 813.

⁶² In re Carter (1903), 141 Cal. 316, 319, 74 Pac. 997, where it was held (p. 320), "that in creating an office the government can impose such limitations and conditions with respect to its duration and termination as may be deemed best, and that in such a case the incumbent takes the office subject to the conditions which accompany it If he is removed in strict accordance with the law it is no objection to the validity of the removal to say that it was done without notice or investigation, where the law does not require it. He has no constitutional right to a judicial inquiry and decision."

"As between the office-holder and individuals in their private capacity, and perhaps as against any authority except the sovereign power itself acting in pursuance of a power of removal expressly reserved or necessarily implied from the nature of the office, the officer is entitled to the full protection of the law in his right to hold the office practically to the same extent as though it were private property; but in a controversy between the office-holder and that functionary of sovereignty that is invested with the power of removal, the officer does not have a right to the office which the sovereign power must respect as private property."

(TO BE CONTINUED)

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